

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

GERRY JOHNS,

Petitioner,

W.L. MONTGOMERY, Warden,

Respondent.

CASE NO. 15cv1556 DMS (NLS)

ORDER (1) ADOPTING REPORT AND RECOMMENDATION AND (2) GRANTING MOTION TO DISMISS

15 On July 9, 2015, Petitioner Gerry Johns (“Petitioner”), a state prisoner
16 proceeding *pro se*, filed a Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2254.
17 On October 5, 2015, Respondent filed a motion to dismiss the petition on the grounds
18 it is a second or successive petition and also untimely. On March 16, 2016, Magistrate
19 Judge Nita L. Stormes issued a Report and Recommendation (“R&R”), recommending
20 that the Court grant Respondent’s motion to dismiss. Petitioner filed objections to the
21 R&R on March 29, 2016.

22 This Court, having reviewed *de novo* the Magistrate Judge’s R&R and
23 Petitioner’s objections thereto adopts the R&R in its entirety. Respondent’s motion to
24 dismiss is granted. The Court finds no basis for a certificate of appealability. The Clerk
25 of Court shall enter judgment accordingly, and terminate this case.

26 | DATED: August 30, 2016

HON. DANA M. SABRAW
United States District Judge